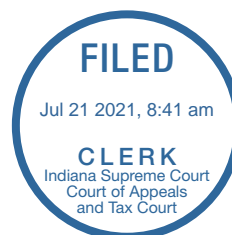


## MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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In re the Termination of the  
Parent-Child Relationship of  
W.W. (Minor Child) and

J.W. (Father),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

July 21, 2021

Court of Appeals Case No.  
21A-JT-117

Appeal from the Jackson Superior  
Court

The Honorable Bruce A.  
MacTavish, Judge

Trial Court Cause No.  
36D02-1908-JT-24

**Mathias, Judge.**

[1] J.W. (“Father”) appeals the Jackson Superior Court’s order terminating his parental rights to his son, W.W. Father argues that the trial court erred in concluding that termination of his parental rights was in W.W.’s best interests.

[2] We affirm.

### **Facts and Procedural History**

[3] W.W. was born to Father and P.W. (“Mother”)<sup>1</sup> on February 11, 2014. Fifteen months later, Mother gave birth to W.W.’s younger brother, B.W.<sup>2</sup> At that time, the Indiana Department of Child Services (“DCS”) investigated an allegation that Mother used illegal substances while pregnant with B.W. One year later, in May 2016, DCS again became involved with the family when the department was notified that two-year-old W.W. had escaped the home. Then, in November 2016, DCS investigated allegations that: the boys were left with a sitter and not picked up on time; Father was using illegal substances; and the boys were not being provided with necessities. At some point during this timeframe, Father and Mother separated, and Father took the two boys under his care because Mother “abandoned them.” Ex. Vol. II at 158. Father and the boys lived with Father’s girlfriend, E.R. (“Girlfriend”), at her mother’s home.

[4] On May 21, 2017, three-year-old W.W. and his younger brother escaped the home and were found by law enforcement outside, in the rain, wearing soiled

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<sup>1</sup> Mother does not participate in this appeal.

<sup>2</sup> For reasons provided in detail below, Father’s parental rights to B.W. are not at issue in this appeal.

diapers and covered in bug bites. Father and Girlfriend were asleep at the time due to a “crash from [methamphetamine] use.” *Id.* In the following weeks, DCS personnel visited the home multiple times. Father and Girlfriend submitted to several drug screens that came back positive for marijuana. Also during this time, Father and Girlfriend’s daughter K.W., who was born in April 2017, was found to be a child in need of services (“CHINS”) because of parents’ “substance abuse issues.” Ex. Vol. I at 20.

[5] Ultimately, on July 10, 2017, DCS filed a petition alleging that W.W. and his younger brother were CHINS for three reasons: (1) Father’s and Girlfriend’s drug use; (2) the children’s escape from the home; and (3) ongoing issues with home conditions and the children’s hygiene. Father subsequently admitted his sons were CHINS and acknowledged that his “family could use help due to drug and stability issues.” *Id.* at 27. The children were not removed from Father’s care at that time, and the family continued to stay with Girlfriend’s mother. But those circumstances soon changed.

[6] In September, Father and Girlfriend moved in with Father’s mother (“Grandmother”) after they were kicked out of Girlfriend’s mother’s home due to “physically fighting.” *Id.* at 38. On September 25, however, Father reported to DCS that Grandmother “was being evicted and he was trying to locate housing.” *Id.* Father then tested positive for methamphetamine two days later. Though DCS had referred Father to substance-use services, he had not complied. So, on September 28, DCS removed W.W. and his younger brother from Father’s care and placed the boys in foster care.

[7] In an effort to reunite Father and his sons, DCS provided several services, including individual therapy, home-based case management, drug screening, and supervised visitations. During the months following the children's removal, Father's attendance at therapy and his participation in home-based case management was sporadic. He also continued to test positive for methamphetamine and marijuana. Father attended visitations with the boys, but the visits were "loud and often out of control." *Id.* at 49. Father was employed during this time, but not steadily. And he and Girlfriend continued to live with Grandmother.

[8] Meanwhile, W.W. and his younger brother lived in various foster-care homes. Initially, the boys were placed together, but each of their first three foster families "had a very difficult time managing their behaviors [be]cause they were both very aggressive, fighting, defiant, didn't like to listen to the rules, difficult to discipline." Tr. p. 23. So, after the third placement, DCS separated the brothers. In his fourth placement, W.W. continued to demonstrate the same concerning behaviors, but he also "exhibit[ed] some sexualized, abnormal [] behaviors," which resulted in the family asking DCS to remove the child from the home. *Id.* at 25. DCS placed four-year-old W.W. in his fifth foster home in July 2018.

[9] Not long after W.W.'s fifth placement, at a September 2018 permanency hearing, the trial court observed that Father had "recently begun participating in substance abuse treatment" and "produc[ed] negative drug screens." Ex. Vol. I at 57. But he still did not have stable housing or consistent employment. DCS

requested the permanency plan be changed to termination of parental rights “due to the children being out of the home for a year” and Father only recently showing compliance with services. *Id.* at 58. Father objected, noting that DCS had not yet received a report from Centerstone, his service provider. The court took DCS’s request to change the permanency plan under advisement “to allow time for DCS to receive reports form Centerstone regarding [Father’s] current progress in services.” *Id.*

[10] Over the next several months, Father made significant strides: he took a substance-abuse assessment and began an intensive outpatient program (“IOP”); he obtained full-time employment; he and Girlfriend moved into an apartment; and he consistently attended visitations. During this same time period, in May 2019, DCS visited Grandmother’s home to determine if W.W. and his brother could be placed there. The visit, however, “resulted in concerns for the condition of the home and safety of the children,” so DCS instructed Grandmother to report back “once home repairs were completed.” *Id.* at 77. In the subsequent months, DCS did not hear from Grandmother, and Father’s improvement came to a halt. Father lost his job and he and Girlfriend were evicted from their apartment. Additionally, Father attended less than half of his IOP sessions, failed to comply with Centerstone services, and produced positive drug screens.

[11] As a result of these developments, in August 2019, the trial court revisited DCS’s fall 2018 change-in-permanency request and ordered “a concurrent permanency plan” of termination of parental rights and adoption. *Id.* at 74.

DCS subsequently filed a petition to terminate Father’s parental rights to W.W. and his younger brother. Appellant’s App. pp. 15–18. Over the following months, Father’s regression continued: he did not attend any therapy sessions or recovery-coaching sessions; he did not comply with home-based case management services and refused an inpatient treatment referral; he did not maintain stable housing or employment; and he tested positive for marijuana and methamphetamine. *See* Ex. Vol. I at 76.

[12] Meanwhile, Paige Bramlett, a behavioral specialist at W.W.’s elementary school, started working with the kindergartener in a one-on-one setting for three hours each day. And this individual attention was warranted: W.W. “would elope from the school”; he “struggled with using curse words”; “[h]e would throw chairs [and] tip tables over”; he ripped “things off the walls in the hallways”; and he was “very aggressive” towards himself and staff. Tr. pp. 66–67. W.W. made a lot of progress working with Bramlett and the two “really bonded.” *Id.* at 67.

[13] Then, in December 2019, W.W. was removed from his fifth placement on an emergency basis due to “a substantiation that the child was abused in foster care.” *Id.* at 24. Specifically, DCS discovered that W.W. had been whipped “with a belt” and forced to “eat pepper for punishment.” *Id.* So, the department placed W.W. in yet another foster home, which “agreed to keep him until [DCS] could find . . . a placement that would be willing to . . . take care of him long-term.” *Id.* at 25. In this transition period, DCS again reached out to Grandmother to see if W.W. could be placed with her. But Grandmother

reported “that the repairs were not complete” and she was not yet ready for W.W. *Id.* at 49–50.

[14] When Bramlett learned of the “disruption in [W.W.’s] placement,” she decided to leave the school and obtain a foster-care license. *Id.* at 68. Having worked so closely with W.W. for several months, Bramlett “saw what he was capable of academically and behaviorally,” and, “knowing how foster care is full of unknowns, [she] wanted to remain a constant in his life.” *Id.* at 68–69. She obtained her foster-care license and, after W.W. had several visits with Bramlett and her family, W.W. was placed with Bramlett—in her parents’ home, where she lived—on January 17, 2020. Though “the first several months were hard,” *id.* at 70, W.W. eventually made “significant improvement in his behavior and stability in his new placement,” Ex. Vol. I at 81.

[15] Father, on the other hand, failed to display any improvement in either complying with services or abstaining from illegal drugs. *See id.* at 80–82, 84–86. And placing W.W. with Grandmother remained untenable, as DCS still had “significant concerns for the safety of [her] home.” *Id.* at 81. Those concerns finally dissipated in July 2020, and W.W.’s younger brother was placed with Grandmother. She subsequently filed petitions for guardianship over both W.W. and his younger brother. Then, in September, a few weeks before the fact-finding hearing on DCS’s petition to terminate Father’s parental rights, Grandmother and her husband each twice tested positive for marijuana. Ex. Vol. II at 171, 174, 182, 185.

- [16] The trial court held a two-day termination hearing on October 21 and November 18. At the outset of the hearing, DCS acknowledged that it intended to dismiss the termination petition as to W.W.'s younger brother because the court had granted Grandmother's petition for guardianship over the child. But Grandmother's petition for guardianship over W.W. remained pending, and so the court proceeded to hear "evidence as to W.W. in both the guardianship and the termination matter." Tr. p. 6. That evidence included testimony from Father, Grandmother, the DCS family case manager ("FCM"), Bramlett, W.W.'s therapist, and W.W.'s court-appointed special advocate ("CASA").
- [17] Grandmother expressed a desire to have W.W. placed in her home, and Father consented to Grandmother's guardianship request because it would leave his "children in [his] family and still a part of [his] life." *Id.* at 18. The other witnesses, however, disagreed that placing W.W. with Grandmother would be best for the child. They explained that W.W. and his younger brother have individualized needs, and each witness expressed concern that W.W.'s well-being would suffer if he was removed from his current placement with Bramlett, who planned to adopt the child. *See id.* at 30, 39, 59–61, 73, 75, 85–88. The FCM opined that "it would be very detrimental for [W.W.] to be moved at this point," *id.* at 30, and the CASA indicated that Bramlett provides W.W. with "the structure, [] love, safety, [and] discipline that he needs," *id.* at 85.
- [18] On December 21, the court issued an order terminating Father's parental rights to W.W. Father now appeals.



## Standard of Review

- [19] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230–31 (Ind. Ct. App. 2019). We neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the trial court’s judgment. *Id.* In deference to the court’s unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.*
- [20] In determining whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court’s findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the trial court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

## Discussion and Decision

- [21] Unquestionably, the parent-child relationship is one of society’s most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by

requiring DCS to prove four elements by clear and convincing evidence. I.C. § 31-35-2-4(b)(2). One of those elements, and the only inquiry in this appeal, is whether termination is in a child’s best interests. I.C. § 31-35-2-4(b)(2)(C).<sup>3</sup>

[22] Deciding whether DCS has satisfied its burden on this element is “[p]erhaps the most difficult determination” a court must make in a termination proceeding. *In re E.M.*, 4 N.E.3d 636, 647 (Ind. 2014). When making this decision, the trial court must look beyond the factors identified by DCS and examine the totality of the evidence. *A.D.S.*, 987 N.E.2d at 1158. In doing so, the court must subordinate the interests of the parent to those of the child. *Id.* at 1155. Central among these interests is a child’s need for permanency. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Indeed, “children cannot wait indefinitely for their parents to work toward preservation or reunification.” *E.M.*, 4 N.E.3d at 648.

[23] The trial court here echoed W.W.’s need for permanency, observing that “[t]his case has been open for over three years and [W.W.] needs the security, stability, and assurances that permanency provides.” Appellant’s App. p. 115. Father seemingly agrees with this observation but maintains that it is in W.W.’s best interests for such permanency to be with Grandmother. More specifically, Father argues, “DCS’s position that [W.W.] would have a ‘better home’ with [Bramlett] is not sufficient to show that termination is in [W.W.’s] best interests.” Appellant’s Br. at 9. We generally agree with the premise underlying

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<sup>3</sup> Father concedes that DCS met its burden on the other elements. *See* Appellant’s Br. at 15–16.

Father's argument—it is well settled that parental rights cannot be “terminated solely because there is a better home available for the child.” *In re V.A.*, 51 N.E.3d 1140, 1152 (Ind. 2016) (quoting *In re N.Q.*, 996 N.E.2d 385, 395 (Ind. Ct. App. 2013)). Yet, despite Father's characterization of DCS's “position,” the court here did not conclude that termination of parental rights was in W.W.'s best interests solely because he would have a “better home” with Bramlett.

[24] In reaching its best-interests conclusion, the court recognized that: (1) W.W. needs a stable, permanent home; (2) W.W. has significant emotional needs, and the child has thrived in Bramlett's care where he receives constant supervision and individualized care; and (3) a disruption in W.W.'s placement would be a “substantial detriment to his current and future progress.” *See Appellant's App.* pp. 113–16. Ample evidence in the record supports those findings, which in turn supports the court's best-interests conclusion.

[25] We turn first to the evidence supporting the trial court's finding that W.W. needs a stable, permanent home. While it is true that permanency is important in every case involving the termination of parental rights, permanency was particularly important here. To that point, the FCM explained that W.W. “had evaluations where it was indicated that he needs timely permanency,” which he finally has with Bramlett. Tr. p. 30. Bramlett similarly opined that “permanency is extremely important” for W.W. *Id.* at 73. She elaborated, “I think [W.W.] will take a deep breath when he knows what he's doing and where he's going to be forever.” *Id.* at 75. And W.W.'s therapist reiterated the same belief, explaining that the child needs certainty in his life. *Id.* at 61.

- [26] The evidence also supports the trial court’s finding that W.W. has significant emotional needs and that adoption by Bramlett would provide the child with the “stability, constant supervision, and special care that [he] needs.” Appellant’s App. p. 115. On this point, the FCM explained that W.W. “needs a lot of one on one attention, if not like total one on one attention. His environment needs to be very highly structured, stable, consistent, loving, and a very strict routine on a daily basis.” Tr. p. 27. She attributed W.W.’s “huge turnaround” to the one-on-one attention Bramlett provides in a highly structured, stable environment. *Id.* at 28–29. And the FCM believed that W.W. was “beginning to feel safe” for the first time in his life. *Id.* at 29. The CASA made the same observation, *id.* at 84, and also stated that “W.W. needs to be the only child in the home,” *id.* at 88, where he can receive “the structure, [] love, safety, [and] discipline that he needs,” *id.* at 85. In the CASA’s view, Bramlett is uniquely situated to “give [W.W.] what he needs.” *Id.* W.W.’s therapist likewise noted that the child “has many emotional needs,” including “more constant supervision” than most kids. *Id.* at 60–61. She further revealed that W.W. “has made quite a bit of progress” in their time together, progress she attributed to “the one on one time that I know he’s getting at school and at placement.” *Id.* at 59. Bramlett detailed W.W.’s tremendous progress and the significant amount of work it took. *See id.* at 70–73. She too attributed W.W.’s growth to the fact that “he finally feels like he is safe and he’s happy.” *Id.* at 73.
- [27] Finally, the evidence supports the trial court’s finding that disrupting W.W.’s living situation would be a “substantial detriment to his current and future

progress.” Appellant’s App. p. 114. Indeed, the FCM, the CASA, and Bramlett each testified that disturbing W.W.’s stability would be detrimental. Tr. pp. 30, 73, 85. The FCM in particular remarked, “To move him and have another change in his life, it would be a tremendous setback for him.” *Id.* at 39.

[28] In short, the evidence-backed findings detailed above support the trial court’s determination that termination of Father’s parental rights would be in W.W.’s best interests. But the court’s best-interests conclusion is additionally supported by three additional circumstances.

[29] First, it is well settled that a recommendation by the FCM or the CASA to terminate parental rights supports a court’s determination that termination is in the child’s best interests. *A.D.S.*, 987 N.E.2d at 1158–59. And here, both the FCM and the CASA recommended termination of Father’s parental rights and testified that such a result would be in W.W.’s best interests. Tr. pp. 30, 85–86.

[30] Second, though Father argues that it would be in W.W.’s best interests for the court to grant Grandmother’s petition for guardianship over the child, evidence in the record belies Father’s assertion.<sup>4</sup> It is undisputed that one of the primary reasons for W.W.’s removal from Father’s care was the lack of a sober living

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<sup>4</sup> Father contends that “DCS refused to place [W.W.] with Grandmother,” Appellant’s Br. at 12, and that “[a]t the time of the termination hearing, Grandmother had a suitable home **which she had maintained for three (3) years,**” *id.* at 13 (emphasis added). Both contentions mischaracterize the evidence. DCS only “refused” to place W.W. with Grandmother because her home was not a suitable placement both times DCS attempted to place the child in her care, first in May 2019 and again in December 2019. And though DCS eventually approved Grandmother’s home in July 2020, this occurred only three months prior to the termination hearing.

environment. Father acknowledges this fact, but maintains that Grandmother could provide a “sober living environment.” Appellant’s Br. at 15. Yet, just a few weeks before the termination hearing, both Grandmother and her husband twice tested positive for marijuana. Ex. Vol. II at 171, 174, 182, 185. The FCM informed the court that the positive tests were alarming in part because “the history of drug abuse” was “the reason for DCS involvement.” Tr. pp. 32–33.

[31] Third, while we acknowledge that Grandmother was appointed guardian over W.W.’s younger brother and the child is apparently doing well in her care, multiple witnesses testified that it would not be in either child’s best interests to be placed together. The FCM recognized that DCS prefers “to keep families together,” but explained that W.W. and his younger brother “require so much one on one and [] have severe behaviors of their own” that there are concerns about anyone being “able to handle their behaviors appropriately.” Tr. p. 45. The CASA reiterated the same trepidation. She believed “that it would be detrimental for W.W. to be moved into a home with his brother,” *id.* at 85, opining that the two boys “are going to have high needs all throughout their lives” and that “they need individualized focused attention,” *id.* at 87. Because of their distinct needs, the CASA testified that W.W. and his younger brother would be best served remaining in their respective placements where “they’re both doing well.” *Id.* at 85–86, 88.

[32] In sum, the trial court certainly considered the fact that Bramlett could provide W.W. with a “better home,” but the court also looked to other factors—supported by the evidence—in concluding that DCS met its burden to show

that terminating Father's parental rights would be in W.W.'s best interests. Because the evidence outlined above amply supports the court's best-interests determination, that determination is not clearly erroneous.

### **Conclusion**

[33] The totality of the evidence favorable to the trial court's judgment supports its conclusion that termination of Father's parental rights was in W.W.'s best interests.

[34] Affirmed.

Riley, J., and Crone, J., concur.